IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 91 OF 2005

Vijayalaxmi Nagashwaran ...Petitioner.

V/s

State of Maharashtra
and Anr. ...Respondents.

Mr. S. Mahomedbhai i/b M/s S. Mahomedbhai & Co. for the petitioner.
Mr. A.S. Shitole, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 24th February 2005

P.C.:

1. Heard the learned Counsel for the petitioner.

2. Petitioner who is original accused No.2 has filed this petition challenging the issuance of process by the Metropolitan Magistrate, 8th Court, Esplanade, Mumbai in a complaint filed by respondent No.2 under section 138 read with section 141 of the Negotiable Instruments Act.

3. It is submitted by the learned counsel for the petitioner that as per the case of the complainant himself the transaction in question was a money lending transaction between the complainant and the petitioner's husband. It is submitted that the Criminal Complaint is filed with ulterior motive and

malafide intention. It is submitted that the petitioner has resigned as a director of Sun World Wide Private Limited on 14/8/2001. It is further submitted that no specific averments are made in the complaint against the petitioner and, therefore, order issuing process against the petitioner was without any application of mind and, therefore, the order was liable to be quashed. It is further submitted that the complainant has not shown how the petitioner is looking after day-to-day business and the affairs of the the Sun World Wide Private Limited. It is, therefore, submitted that the issuance of process against the petitioner be quashed.

4. The learned Counsel appearing for the petitioner has taken me through the complaint filed by the complainant.

5. I am unable to accept the submissions made by the learned counsel for the petitioner. From the perusal of the complaint, it can be seen that specific averments have been made in the complaint so far as the petitioner is concerned. In para 2, it is stated that respondent No.1 is the Chairman and Managing Director of the accused No.3 - Company. In para 2, it is stated that accused No.2 i.e. the present

petitioner is the Director of accused No.3 - Company and had also played an active role in the management of the said Company and is responsible for conduct of its day-to-day business. Petitioner in the Petition has stated that the Company in question is a Private Limited Company and that the said Private Limited Company is purely a Family Concern. If this is so, it cannot be said that the petitioner has not played an active role as a Director of the said Company. In the complaint, in para 17, there are further averments to the effect that both the accused Nos. 1 and 2 were in charge of and responsible to the said accused No.3 - Company for conduct of its business. Therefore, it cannot be said that there are no averments in the complaint regarding the role played by the present petitioner. Apart from making bald statement that the petitioner has resigned from the Company on 14/8/2001, neither a resolution of the Company to that effect nor a certified copy of Form 32 has been referred to in the Petition or annexed to the petition. Thus, obviously, an attempt is made to protract the proceedings. Both these facts can be established only after the evidence is led in the Trial Court by both the parties and, thereafter, the Magistrate would be in a position to give finding on both these facts. All the questions raised in this petition, therefore,

are kept open and the same shall be decided by the Magistrate at the conclusion of the trial.

6. In the result, Writ Petition is dismissed.

V.M. KANADE, J.